REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on May 27, 2019

Present:

JUSTICE MA. THERESA DOLORES C. GOMEZ-ESTOESTA ---------- Chairperson
JUSTICE ZALDY V. TRESPESES ---------- Member
JUSTICE GINA D. HIDALGO ---------- Member

The following resolution was adopted:

CRIMINAL CASE NO. SB-17-CRM-0219 - - -

PEOPLE v. ALEX B. WANGKAY, ET AL.

Before the Court are the following:

1. Accused Alex B. Wangkay's **"VERIFIED MOTION TO REOPEN PROCEEDINGS"** filed on March 26, 2019;

2. Accused Alex B. Wangkay's **"MEMORANDUM OF ARGUMENTS (For Accused Alex Wangkay)"** dated April 25, 2019;[1] and

3. Prosecution's **"MEMORANDUM OF AUTHORITIES"** dated April 26, 2019.[2]

GOMEZ-ESTOESTA, J.:

The submission of the parties' memorandum of authorities was intended to aid this Court in resolving whether the *Verified Motion to Reopen Proceedings* filed by accused Alex B. Wangkay ["Wangkay"] on March 26, 2019 can still be entertained. The procedural issue strikes at four variables that need to be considered, viz:

> (i) the promulgation of a judgment of conviction against accused Wangkay, together with co-accused Roberto S. Semilla, on February 22, 2019;

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[1] Records, Vol. 3, pp. 19-26
[2] Id., pp. pp. 27-48

(ii) the *Verified Motion for Reconsideration* that was subsequently filed by accused Wangkay on March 8, 2019;

(iii) the denial of accused Wangkay's *Motion for Reconsideration* in this Court's Resolution dated March 25, 2019; and

(iv) the filing of accused Wangkay's *Verified Motion to Reopen Proceedings* on March 26, 2019.

Under Section 7 of Rule 120 of the Revised Rules on Criminal Procedure, a judgment of conviction may be modified or set aside *only* upon motion of the accused.[3] Concededly, the remedies available to an accused before a judgment of conviction becomes final are:

(a) modification of the judgment under Section 7, Rule 120;
(b) reopening of the proceedings under Section 24 of Rule 119;
(c) motion for new trial under Section 1, Rule 121;
(d) motion for reconsideration under Section 1, Rule 120; and
(e) appeal from the judgment under Rule 122.[4]

For his part, accused Wangkay opted to first file a *Verified Motion for Reconsideration* on March 8, 2019. Then again, he filed a *Verified Motion to Reopen Proceedings* on March 26, 2019.

Whether the filing of the motion for reconsideration precluded the filing of a motion to reopen proceedings now becomes the core issue that should precede the resolution of the grounds raised in the pending *Verified Motion to Reopen Proceedings*.

ACCUSED WANGKAY'S POSITION

In his *Memorandum of Arguments,*[5] accused Wangkay asserts that under Section 24 of Rule 119, a motion to reopen may be filed **at any time before finality of a judgment of conviction.** This, notwithstanding the fact that more than 15 days has lapsed from the time judgment was promulgated. As gauged from Section 24 itself, it is "*finality of judgment of conviction alone, and NOT the lapse of any given period, which precludes the filing of a motion to reopen.*"[6] In this case, a motion for reconsideration was timely filed. This thus "*prevent[ed] the judgment from attaining finality.*"[7]

Accused Wangkay thereafter quoted Section 2, Rule 36 when judgment becomes final, as follows:

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[3] *People v. Astudillo, et al.*, G.R. No. 141518, April 29, 2003
[4] Riano, Willard B., Criminal Procedure (The Bar Lecture Series), 2016 edition, p. 508
[5] Records, Vol. 3, pp. 19-26
[6] Vide: Memorandum of Arguments, p. 2
[7] Id., p. 3

> **Section 2.** *Entry of judgments and final orders.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, within a certificate that such judgment or final order has become final and executory. (2a, 10, R51)

Accused concludes that since the judgement has not attained finality, there is no technical bar to the filing of the *Motion to Reopen Proceedings,* the lapse of the 15 day period from promulgation being inconsequential.

Accused next bewails the gross negligence of his former counsel of record to have resulted in a miscarriage of justice to justify the filing of his *Motion to Reopen Proceedings.* When his former counsel failed to present evidence in his behalf, the Court deemed it as waiver of his right, when it should have first inquired from his part the voluntariness and full knowledge of the consequences of the waiver.

THE PROSECUTION'S POSITION

The Prosecution, on the other hand, counters[8] that a *Motion for Reconsideration*, which accused Wangkay has filed, and a *Motion to Reopen Proceedings*, are mutually exclusive, and not alternative, remedies. In filing his *Motion for Reconsideration*, accused Wangkay has lost his remedy to reopen the case. It may be noted that the law firm of Ligon, Solis and Florendo filed its Entry of Appearance as early as February 28, 2019, at a time when the *Motion for Reconsideration* was filed. The best time to realize the propriety of filing a *Motion to Reopen Proceedings*, instead of a *Motion for Reconsideration,* was during such time. A sudden change of strategy in view of the Court's Resolution dated March 25, 2019 denying the *Motion for Reconsideration* only proved too late.

The time provided under the Rules to file a motion for reconsideration or motion for new trial, or a motion to reopen is "*at any time before a judgment of conviction becomes final,*" citing Section 1 of Rule 121 and Section 24 of Rule 119. This should be read in consonance with Section 6, Rule 122, that the filing thereof should be within 15 days from promulgation. Apropos, the 2018 Revised Internal Rules of the Sandiganbayan also gives 15 days from promulgation of judgment or notice of the final order or judgment within which to file a motion for new trial or motion for reconsideration.

In any event, accused Wangkay does not state what miscarriage of justice he suffered. Assuming that he be allowed to present his evidence and testify, he will only hark on the defense of denial which, being self-serving, has little effect on the judgement of conviction already rendered.

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[8] Memorandum of Authorities dated April 26, 2019, Id., pp. 27-48

The Prosecution then cited cases on why the doctrine of immutability of judgment should apply at this instance, and on how the right to appeal is neither a natural right nor a part of due process.

THE COURT'S RULING

The *Motion to Reopen Proceedings* was not timely filed.

Section 24 of Rule 119 provides:

> *Sec. 24. Reopening.* – **At any time before finality of the judgment of conviction,** the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it. [Emphasis ours]

On when a judgment becomes final, Section 7 of Rule 120 is specific on the matter:

> *Sec. 7. Modification of judgment.* – A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, **a judgment becomes final after the lapse of the period for perfecting an appeal,** or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation. [Emphasis ours]

Under Section 6 of Rule 122, the period to perfect an appeal is **fifteen (15) days**, *viz.*:

> *Sec. 6. When appeal to be taken.* – An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. **This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed** until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run. [Emphasis ours]

A clear reading of the afore-cited Rules would have already given the conclusion that:

(i) the filing of a *Motion to Reopen Proceedings* cannot be "*at any time*" before judgment becomes final without tacking it to when promulgation of judgment was held; and that,

(ii) the filing of the *Motion for Reconsideration,* while it tolled the period to perfect an appeal, did not extend it to the filing of a *Motion to Reopen Proceedings*, but only to the remedy of an appeal.

The period of 15 days from promulgation of judgment is the period to reckon on whether accused should file the remedy of a motion for reconsideration or motion for new trial, or at this instance, a motion to reopen proceedings.

Accused's posture that the filing of a motion to reopen may be made "*at any time*" before finality of a judgment of conviction only nudges an empty ripple.

This only overlooks the full effect of Section 6 of Rule 122, to reiterate thus:

> *Sec. 6. When appeal to be taken.* – **An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from.** This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run. [Emphasis ours]

In *People v. Tamani*,[9] the Supreme Court was confronted with the question of **when to count the period within which the accused must appeal the criminal conviction**. Answered the Supreme Court:

> The assumption that the fifteen-day period should be counted from February 25, 1963, when a copy of the decision was allegedly served on appellant's counsel by registered mail is not well-taken. The word 'promulgation' in Section 6 should be construed as referring to 'judgment,' while the word 'notice' should be construed as referring to 'order.'"
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> The interpretation in that case was very clear. **The period for appeal was to be counted from the date of promulgation of the decision**. Text writers are in agreement with this interpretation.
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> In an earlier case, this Court explained the same interpretation in this wise:
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> It may, therefore, be stated that **one who desires to appeal in a criminal case must file a notice to that effect within fifteen days from the date the decision is announced or promulgated to the defendant**. And this can be done by the court either by announcing the judgment in open court as was done in this case, or by promulgating the judgment in the manner set forth in [S]ection 6, Rule 116 of the Rules of Court.

If accused's argument be followed that the filing of a motion to reopen can be filed "*at any time*," it runs the danger of having the judgment become

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[9] 55 SCRA 153, January 21, 1974, as cited in *Neplum, Inc. v. Orbeso*, G.R. No. 141986. July 11, 2002

final as no remedial measure was effected within the crucial 15 days from promulgation.

It is here that accused Wangkay darts to the argument that the filing of a motion to reopen "*at any time*" before judgment becomes final should be conjoined with the filing of a motion for reconsideration since it is the latter which prevents the judgment of conviction from attaining finality.

The filing of a motion for reconsideration only tolls the period for perfecting an appeal. The suspension does not extend it to the filing of a motion to reopen.

It cannot be denied that before accused Wangkay filed his *Motion to Reopen Proceedings,* he first resorted to the filing of a *Motion for Reconsideration* 14 days after promulgation of judgment on February 22, 2019.

Verily, the effect of the filing of a *Motion for Reconsideration* is to **toll** the running of the period for **perfecting an appeal,** as clearly provided in the afore-cited Section 6 of Rule 122. To reiterate:

> *Sec. 6. When appeal to be taken.* – An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. **This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed** until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run. [Emphasis ours]

As clearly stated, the tolling of the period is only insofar as the "**period for perfecting an appeal**" is concerned. For accused Wangkay to insist that the period of suspension should also tack in the filing of a motion to reopen is highly erroneous. This forces an interpretation that is not found in the provision. Haplessly, the remedy of an appeal cannot be flexed to accused's own persuasion as the remedy thereof can only be seen within the tight context of what the rules provide.

Well-settled is the rule that the right to appeal is a statutory right, not a natural or inherent one, so that the party who seeks to avail of the said right must comply with the requirements of the Rules. Otherwise, the right to appeal is lost.[10] From which provision accused Wangkay resolves the filing of a motion to reopen "*at any time*" before finality of judgment is, therefore, lost on this Court.

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[10] *People v. Sabellano,* G.R. Nos. 93932-33, June 5, 1991; *Lacson v. Sandiganbayan,* G.R. No. 128096, January 20, 1999

In examining the provisions applicable, it appears that among the remedies afforded an accused who has been convicted, *i.e.:* (a) reopening of the proceedings; (b) new trial; and (c) reconsideration, it is clear that these may be availed of **at any time before the finality of the judgment of conviction.**

In considering when a motion for new trial should be filed, the Supreme Court held:

> A motion for new trial, under the Revised Rules of Criminal Procedure, is available only for a **limited period of time**, and for very limited grounds. Under Section 1, Rule 121, of the Revised Rules of Criminal Procedure, a motion for new trial may be filed **at any time before a judgment of conviction becomes final, that is, within fifteen (15) days from its promulgation or notice.**[11] [Emphasis supplied]

This interpretation should equally apply to a motion to reopen, the remedy of which does not depend on the filing and/or resolution of a motion for reconsideration. Rather, the filing of a motion to reopen, which should be at any time before a judgment of conviction becomes final, must also be filed within 15 days from promulgation of judgment. It should proceed independently of that of the motion for reconsideration.

In fine, while the remedies available to the accused are one's own to wield alone, whether the accused chooses to file a motion to reconsideration, or a motion for new trial, or a motion to reopen, the accused needs only to avail of such within 15 days from promulgation. The remedy of one does not effect the extension of the other. In this sense, while the remedies are not mutually exclusive, they cannot be deemed as successive. The suspension of the period is only exclusive in the filing of a motion for reconsideration or motion for new trial which thus tolls the period of perfecting an appeal, and only that alone. The period within which it is suspended does not open the filing of any other remedy – or in this case, the filing of a motion to reopen.

The case of *Tiongco v. Deguma,*[12] is a case in point. Here, the Supreme Court held that a motion for reconsideration seasonably filed will not necessarily preclude a motion for new trial as long as it was **filed on time.** To quote:

> Under Section 1, Rule 52 of the same Rules, a motion for reconsideration may be filed within fifteen (15) days from notice of the judgment or final resolution of the Court of Appeals. Section 1 of Rule 53, also of the aforementioned Rules provides that at any time after the appeal from the lower court has been perfected and before the Court of Appeals loses jurisdiction over the case, a motion for a new trial may be filed on the ground of newly

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[11] *IN RE: THE WRIT OF HABEAS CORPUS FOR REYNALDO DE VILLA* (detained at the New Bilibid Prisons, Muntinlupa City); *De Villa v. The Director, New Bilibid Prisons*, G.R. No. 158802, November 17, 2004

[12] G.R. No. 133619, October 26, 1999

> discovered evidence. In Bernardo v. Court of Appeals, the Court held that a motion for a new trial may be filed after judgment but within the period for perfecting appeal.
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> Now, **a motion for reconsideration, seasonably filed in the Court of Appeals will not necessarily preclude a motion for a new trial as long as it was also filed on time**. Further, a denial of a motion for reconsideration entitles the party who filed said motion another fifteen (15) days to appeal by certiorari — the same period within which a motion for a new trial may be filed.
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> In the instant case, TIONGCO received a copy of the 24 July 1997 decision of the Court of Appeals on 5 August 1997. He seasonably filed his motion for reconsideration on 14 August 1997. TIONGCO filed a petition for a new trial on the ground of a newly discovered evidence on 9 September 1997. Considering the provisions pertinent to the subject matter already mentioned above, and since TIONGCO did not wait for the resolution of his motion for reconsideration, **the period within which he should have filed his motion for a new trial should be fifteen (15) days from 5 August 1997**. Thus, TIONGCO's motion for a new trial filed on 9 September 1997 or thirty-five (35) days from receipt of a copy of the 24 July 1997 decision was filed twenty (20) days late.

As in this case, therefore, while the filing of a motion for reconsideration does not preclude the filing of a motion to reopen, the filing thereof must also be filed within 15 days from promulgation of judgment. This, regardless of whether the first motion for reconsideration has already been resolved.

Since this was not done, with the filing of the *Motion to Reopen Proceedings* on March 26, 2019 or a total of 32 days from promulgation of judgment held on February 22, 2019, accused Wangkay's *Motion to Reopen Proceedings* was conceivably filed out of time.

From the denial of the *Motion for Reconsideration,* accused Wangkay only had a fresh period of 15 days, following the Neypes ruling,[13] to **appeal** from the judgement, not to file a motion to reopen.

A resolution of accused Wangkay's *Motion to Reopen Proceedings* has thus become moot, having been filed out of time.

WHEREFORE, in view of the foregoing, accused Wangkay's *Motion to Reopen* is **DENIED** for having been filed out of time.

SO ORDERED.

MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson

[13] *Neypes v. Court of Appeals,* 506 Phil. 613 (2005)

WE CONCUR:

ZALDY V. TRESPESES
Associate Justice

GEORGINA D. HIDALGO
Associate Justice